GOH SENG PEOW & SONS REALTY SDN. BHD.

v.

THE COLLECTOR OF LAND REVENUE, WILAYAH PERSEKUTUAN

HIGH COURT MALAYA, KUALA LUMPUR
LC VOHRAH J
[ORIGINATING MOTION NO. F 63 OF 1984]
23 DECEMBER 1985

LAND LAW: *Compulsory acquisition - Whether acquisition proceedings null and void or voidable - Sections 8, 10, 11, 14, 16, of Land Acquisition Act 1960 - Procedure to be followed.*

ADMINISTRATIVE LAW: *Prerogative writs - Certiorari or declaration - Error on the face of the record - Time barred - Order 53 r. 1A Rules of the High Court 1980 - Rules of natural justice - Discretion of Court.*

CONSTITUTIONAL LAW: *Article 13 of Federal Constitution - Right to property - Infringement - Injustice - Discretion of Court.*

The lands which were the subject matter of this case were originally registered in the names of Goh Seng Chong and Goh Seng Peow and were charged to Chung Khiaw Bank Ltd. on 6 June 1974. On 3 March 1977 the applicant company became the registered owner of the lands whereupon it obtained a discharge of the lands and simultaneously entered a fresh charge. A second charge was then effected on 5 March 1982 and two new certificates of title were issued to the applicant company on 1 July 1981. In September 1984 whilst in the process of developing the lands into a housing estate the applicant company was informed that the lands had been compulsorily acquired. On writing to the respondent for clarifications, the respondent forwarded to the applicant company's solicitors forms which evidenced the compulsory acquisition and those forms named Goh Seng Chong and Goh Seng Peow as the registered proprietors instead of the applicant company. The applicant company is now applying for a declaration that the acquisition proceedings taken in respect of the said lands were illegal and therefore null and void because they as registered proprietor, had no notice whatsoever of the purposed acquisition proceedings and the necessary notices and documents had not been served upon the registered owner as required by law.

Held:

[1] The preliminary objection by the Senior Federal Counsel was that the procedure adopted by the applicant company was incorrect because the only remedy which could have been asked for on the relevant authorities (cited in the judgment) was an order of *certiorari* to quash the proceedings as there was merely an error on the face of the record which made the proceedings only voidable and not void. In the light of Senior Federal Counsel's admission of the revelant facts in the applicant's affidavits, it was held that the acquisition of the lands had taken place contrary to the provisions of s. 8 and s. 14 of the Land Acquisition Act 1960 and in breach of the fundamental rules of natural justice. The applicant company has also made out a case that its constitutional right might have been impinged contrary to Article 13 thus entitling the applicant to seek a declaration.

[2] The procedure advocated by Counsel for the respondent, that is, that the applicant apply for *certiorari,* was rendered unavailable to the applicant because it was time-barred by virtue of O. 53 r. IA of the Rules of the High Court 1980 and this was caused by the default of the respondent.

[3] The learned Judge therefore exercised his discretion and allowed the applicant company to proceed with its application for a declaratory remedy in order to prevent injustice.

[Preliminary objection of respondent overruled. Proceedings to continue.]

Cases referred to:
Mersing Omnibus Co. Sdn. Bhd. v. Minister of Labour and Manpower & Anor. [1983] CLJ (Rep) 266
Gnanasundram v. Public Services Commission [1966] 1 MLJ 157
Sungai Wangi Estate v. UNI [1975] 1 MLJ 137

Legislation referred to:
Federal Constitution, art. 13
Land Acquisition Act 1960, ss. 10, 11, 14, 15, 16
Rules of the High Court 1980, O. 53 r. 1A

For the applicant - L. Kam; M/s. Kam Woon Wah & Co.
For the respondent - P.M. Mahalingam, SFC

JUDGMENT

LC Vohrah J:

This notice of originating motion was essentially an application for a declaration that the acquisition proceedings taken in respect of lands held under GM. No. 586 Lot 2177 and GM. No.587 Lot 2176 in the Mukim of Kuala Lumpur were illegal and therefore null and void.

These lands were originally held under EMR 4162 and EMR 4163 respectively and registered in the names of Goh Seng Chong and Goh Seng Peow and were charged to Chung Khiaw Bank Ltd. on 6 June 1974. On 3 March 1977 the applicant-company became the registered owner of the lands whereupon it obtained a discharge of the lands and simultaneously entered a fresh charge. A second charge was then effected on 5 March 1982 and two new certificates of title were issued to the applicant-company on 1 July 1981. Some time in September 1984 whilst in the process of developing the lands into a housing estate the applicant-company was informed that the lands had been compulsorily acquired and its solicitors immediately wrote to the respondent for information regarding the compulsory acquisition (See "PG-4'). The respondent subsequently forwarded to the solicitors copies of Forms E, F, G and H which had been issued pursuant to ss. 10, 11, 14 and 16 respectively of the Land Acquisition Act 1960 (See Exhibits PG-5, PG-6, PG-7 and PG-8). All these forms named Goh Seng Chong and Goh Seng Peow as the registered proprietors instead of the applicant-company which had become the undisputed registered proprietor.

It is not in issue that the applicant-company only came to know of the acquisition proceedings after the compensation award of RM74,375 was made by the respondent under s. 14 on 15 December 1982.

It is the contention of Counsel for the applicant-company that the acquisition proceedings in respect of the lands starting with declaration under s. 8 and ending with the award under s. 14 were illegal and therefore null and void since "the registered proprietor had no notice whatsoever of the purported acquisition proceedings" and the necessary notices and documents had not been duly served upon the registered owner as required by law.

Senior Federal Counsel by way of a preliminary objection contended that the procedure adopted by the applicant-company was incorrect because, he submitted, the only remedy applicant-company could have asked for on the authorities of *Mersing Omnibus Co. Sdn.*

Bhd. v. Minister of Labour and Manpower & Anor. [1983] CLJ (Rep) 266, *Gnanasundram v. Public Services Commission* [1966] 1 MLJ 157, *Sungai Wangi Estate v. UNI* [1975] 1 MLJ 137 and the unreported case of *Pemungut Hasil Tanah, Kuantan v. Oriental Rubber & Palmoil Sdn. Bhd.* decided by the Federal Court in Civil Appeal No. 342 of 1984, was an order of *certiorari* to quash the proceedings as there was merely an error on the face of the record which made the proceedings only voidable and not void. Counsel for the applicant-company, however, argued in reply that the lands had been acquired not only in contravention of Article 13 of the Federal Constitution in that the applicant-company had been deprived of property not in accordance with law but also in contravention of the rules of natural justice in that the applicant-company had not been made a party to the acquisition proceedings. She further contended that it had not been possible for the applicant to have applied for *certiorari* because it was time-barred by virtue of O. 53 r. 1A of the Rules of the High Court 1980, a factor which clearly prevailed upon Senior Federal Counsel when he raised his preliminary objection.

In the light of Senior Federal Counsel's admission of the relevant facts in the applicant's affidavits, I agree with Counsel for the applicant-company that the acquisition of the lands had taken place contrary to the provisions of the Act and in breach of the fundamental rules of natural justice and I was of the view that the applicant-company had made out a case that its constitutional right might have been impinged contrary to Article 13 thus entitling the applicant-company to seek a declaration. In any event, I did not think that I should refrain from exercising my discretion in allowing the applicant-company to proceed with its application for a declaratory remedy in order to prevent injustice in this particular case especially when the only procedure advocated by Counsel for the respondent was rendered unavailable to the applicant-company through effluxion of time by the default of the respondent. I did not think it was right that the applicant-company should be shut out *in limine* and I accordingly overruled the preliminary objection and directed that the proceedings continue.

Also found at [1986] 1 CLJ 414